

**Iowa Department of Natural Resources  
Environmental Protection Commission**

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**ITEM**

**12**

**DECISION**

**TOPIC**

**Denial of Petition for Rulemaking  
Filed by the Iowa Utility Association  
RE: Chapter 567-108 “Beneficial Use Determinations: Solid By-  
Products As Resources and Alternative Cover Material”**

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The Director proposes the denial of the Petition for Rulemaking filed by the Iowa Utility Association. The Iowa Utility Association seeks the amendment of IAC Chapter 567-108 “Beneficial Use Determinations: Solid By-Products As Resources and Alternative Cover Material”.

The Department supports the revision of this rule chapter but requests denial to allow affected parties the opportunity to provide input on proposed amendments prior to the initiation of rulemaking. It is anticipated that a Notice of Intended Action amending Chapter 108 can be presented to the Commission later this year.

Edmund J. Tormey, Chief  
Legal Services Bureau

February 18, 2008

## IOWA DEPARTMENT OF NATURAL RESOURCES

<b>Petitioned by:</b>  <b>IOWA UTILITY ASSOCIATION</b>  <b>For the ammendment of:</b>  <b>Iowa Administrative Code:</b> <b>567-Chapter 108</b>	<b>DENIAL OF PETITION FOR RULEMAKING</b>   <b>March 11, 2008</b>
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**TO: Jack B. Clark**  
**Iowa Utility Association**  
**PO Box 6007**  
**Des Moines IA 50309-6007**

### I. PROCEDURE

On February 4, 2008, the Iowa Utility Association filed a Petition for Rulemaking with the Iowa Department of Natural Resources (Department) pursuant to section 17A.7 of the Code of Iowa and 561 Iowa Administrative Code (IAC) Chapter 5, as adopted by reference at 567 IAC 5.1. The Petition requests the amendment of IAC Chapter 567—108 “Beneficial Use Determinations: Solid By-Products As Resources and Alternative Cover Material.”

Pursuant to Section 17A.7 of the Code of Iowa and 561 IAC 5.4(2), as adopted by reference at 567 IAC 5.1, within sixty days after submission of a petition, the Commission either shall deny the petition in writing on the merits, stating its reasons for the denial, or initiate rulemaking proceedings in accordance with section 17A.4. A review “on the merits” requires fair consideration but does not require the Commission to take a stand on the substantive issues presented in the Petition. Practical considerations may form the basis for a denial of the Petition. *See Litterer v. Judge, 644 N.W.2d 357, 361 (Iowa 2002)*. This ruling is hereby issued within 60 days as required by law.

### II. POSITION OF THE DEPARTMENT

The ruling of the Environmental Protection Commission (Commission) is based upon the following findings presented to the Commission by the Department.

1. Pursuant to 567 IAC 108.1, the purpose of IAC Chapter 567-108 is to establish rules for determining when a solid by-product is a resource and not a solid waste. Solid by-products

determined by the Department not to be a solid waste through a beneficial use determination may not be subject to all sanitary disposal project permitting requirements. Furthermore, the purpose of this chapter is to encourage the utilization of solid by-products as resources when such utilization improves, or at a minimum does not adversely affect, human health and the environment.

2. IAC Chapter 567-108 was last amended in 2003, with said amendments becoming effective on April 23, 2003. Stakeholder input was garnered prior to the adoption of these revisions.
3. IAC Chapter 567-108 authorizes the use of solid by-products, including coal combustion residue, as fill material subject to the restrictions set forth in rules 108.5, 108.6 and 108.7.
4. IAC Chapter 567-103 establishes regulations for siting, design, and operation of a solid waste landfill accepting only coal combustion residue.
5. The regulation of coal combustion residue as a beneficial fill pursuant to IAC Chapter 567-108 may be redundant or contradictory to the express terms of IAC Chapter 567-103.
6. The Department agrees that the amendment of IAC Chapter 567-108 is appropriate.
7. The initiation of rulemaking has been delayed due to delays in the finalization of recently adopted revisions to IAC Chapter 567-113 related to municipal solid waste landfills.
8. Since the most recent revision of IAC Chapter 567-108, the Department and interested stakeholders have identified issues arising from the existing language of Chapter 108 that should be addressed in any new rulemaking. Issues to be addressed include, but are not limited to, the proper use of alternative cover material and the relationship between the state tonnage fee imposed by Section 455B.310 of the Code of Iowa and the use of alternative cover material.
9. There are numerous entities that will be impacted by the amendments proposed by the Petitioner. These entities need to be involved in the Department's review and proposed amendment of IAC Chapter 567-108. Affected parties include Iowa landfills, construction and demolition waste processors, steel production facilities, foundries, vehicle recyclers, paper mills, cement production facilities, environmental interest groups, railroads, and all industries that burn coal as fuel.

10. The Department intends to move forward with rulemaking but additional time is required to get necessary input from the affected parties. The Department anticipates that a full and fair opportunity for participation necessitates a delay in the submission of rulemaking to the Commission until at least August of 2008. This will allow for the circulation of draft rulemaking and the opportunity for discussion and comment by the affected entities.

### **III. RULING OF THE COMMISSION**

The Commission hereby adopts the findings of the Department, DENIES the Petition for Rulemaking filed by the Iowa Utility Association and finds:

1. The revision of IAC Chapter 567-108 is appropriate.
2. The approval of the Petition will deny affected parties sufficient opportunity for input on the proposed amendments.
3. The solicitation of input from affected parties in regard to the proposed amendments is appropriate prior to the adoption of a Notice of Intended Action and the initiation of formal rulemaking.

### **IV. JUDICIAL REVIEW**

Pursuant to Section 17A.19 of the Code of Iowa, the Petitioner may seek Judicial Review of the ruling of the Commission.

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DAVID PETTY, CHAIR  
IOWA ENVIRONMENTAL PROTECTION COMMISSION

Dated this \_\_\_\_\_ day of March, 2008